ACT No. I OF 1878.

Notification by the Government of India, Foreign Department, Revenue, No. 93 I. R., dated the 21st November 1879.

The Governor-General in Council is pleased to extend Act I of 1878 (The Opium Act, 1878) to Mysore, subject to the modifications hereinafter specified.

1. For the last two clauses of section 1, the following clause shall be substituted :—*And it shall come into force in Mysore on the first day of April 1880.*

2. Section 2 and the last paragraph of section 22 shall be omitted.

3. In section 3 in the definition of "Magistrate" the words "in the Presidency Towns, a Presidency Magistrate, and elsewhere" shall be omitted.

4. In section 12, in the third paragraph, the words "Collector of the District or," in sections 19 and 24 the words "Collector of the District" and in section 24 the word "Collector" and the words "Collector, Deputy Collector or other" shall be omitted.

*5. For the words "the Local Government" "any Local Government," "the same Local Government," "such Government" and "such Local Government" wherever they occur, and for the words "British India" in section 6, the words "the Chief Commissioner of Mysore" and "Mysore" respectively shall be substituted.

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* As to this, however, (except in so far as it relates to the substitution of "Mysore" for "British India"), see Notification of the Government of Mysore No. 153, dated the 2nd September 1881, according to which the expressions "the Government of India," "the Governor-General of India in Council," and "Local Government" occurring in any Act in force in Mysore, are to denote "the Government of His Highness the Maharaja of Mysore."

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ACT No. I OF 1878.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 9TH JANUARY 1878.)

An Act to amend the law relating to Opium.

WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows:— Preamble.

1. This Act may be called the Opium Act, 1878. Short-title.

[*a*] And it shall come into force in Mysore on the first day of April 1880. [*a*]

2. [*Repeal and amendment of enactments.*] *Omitted as directed by Notification No.* 93 *I. R., dated the* 21*st November* 1879. Commencement.

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

"opium" includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy:

"Magistrate" means, [*b*] a Magistrate of the first class or (when specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class:

"import" means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government:

"export" means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government:

"transport" means to remove from one place to another within the territories administered by the same Local Government.

[a-] This clause was substituted for the last two clauses of Section 1 by para 1 of Notification No. 93 I. R., dated the 21st November 1879.

[b] Certained words in Section 3 relating to Presidency towns have been omitted as directed by Notification No. 93, I. R., dated the 21st November 1879.

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Prohibition of poppy-cultivation and possession, etc., of opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

(*a*) cultivate the poppy;
(*b*) manufacture opium;
(*c*) possess opium;
(*d*) transport opium;
(*e*) import or export opium; or
(*f*) sell opium.

Power to make rules to permit such matters.

5. The Local Government, with the previous sanction of the Governor-General in Council may, from time to time, by notification in the local Gazette, make rules consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters:—

(*a*) the cultivation of the poppy;
(*b*) the manufacture of opium;
(*c*) the possession of opium;
(*d*) the transport of opium;
(*e*) the importation or exportation of opium; and
(*f*) the sale of opium, and the form of duties leviable on the sale of opium by retail:

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea customs for the time being in force or under section 6.

Duty on opium imported by land.

6. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, impose such duty as he thinks fit on opium or on any kind of opium imported by land into [*a*] Mysore [*a*] or into any specified part thereof, and may alter or abolish any duty so imposed.

Warehousing opium.

7. The Governor-General in Council may, by order notified in the *Gazette of India*—

(*a*) authorize any Local Government to establish warehouses for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and

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[a] The word "Mysore" has been substituted for "British India" in Section 6 as directed by Notification No. 93—I.R., dated the 21st November 1879.

Sections 8-9.

(*b*) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(*c*) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, or intended to be exported thence, and

(*d*) cancel any such declaration.

An order under clause (*b*) shall cancel all previous declarations under clause (*c*) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

Power to make rules relating to warehouses.

8. The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the Local Gazette, make rules consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, etc.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

(*a*) cultivates the poppy, or

(*b*) manufactures opium, or

(*c*) possesses opium, or

(*d*) transports opium, or

(*e*) imports or exports opium, or

(*f*) sells opium, or

(*g*) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months,

and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

Presumption in prosecutions under section 9.

10. In prosecutions under section 9, it shall be presumed until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation of opium.

11. In any case in which an offence under section 9 has been committed :—

(*a*) the poppy so cultivated,

(*b*) the opium in respect of which any offence under the same section has been committed,

(*c*) where, in the case of an offence uuder clause (*d*) or (*e*) of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export as the case may be, the whole of the opium which he is transporting, importing or exporting,

(*d*) where, in the case of an offence under clause (*f*) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

Order of confiscation by whom to be made.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot befound, or when opium not in the possession of any personcannot be satisfactorily accounted for, the case shall be enquired into and

Sections 13—15.

determined by the [a] Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

Power to make rules regarding dispsoal of things confiscated, and rewards.

13. The Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate—

(*a*) the disposal of all things confiscated under this Act; and

(*b*) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

Power to enter, arrest and seize on information that opium is unlawfully kept in any enclosed place.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this act is manufactured, kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

(*a*) enter into any such building, vessel or place;

(*b*) in case of resistance, break open any door and remove any other obstacle to such entry;

(*c*) seize such opium and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium; and

(*d*) detain and search, and, if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize opium in open places.

15. Any officer of any of the said departments may—

(*a*) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable

[a] Certain words in Section 12 have been omitted as directed by Notification No. 93—I. R., dated the 21st November 1879.

to confiscation under section 11 or any other law for the time being in force relating to opium ;

Power to detain, search and arrest.

(*b*) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Searches how made.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1882 [*a*].

Officers to assist each other.

17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Vexatious entries, searches, seizures and arrests.

18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

Issue of warrants.

19. The [*b*] Deputy Commissioner or other officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1882 [*a*].

Disposal of person arrested or thing seized.

20. Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police station ; and every person arrested and thing seized under section 19

[a] The reference to Act. X of 1872 has been altered in accordance with Act X of 1882, s. 3.

[b] Certain words in Section 19 have been omitted as directed by Notification No. 93—I. R., dated the 21st November 1879.

shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

Report of arrests and seizures.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Procedure in case of illegal poppy cultivation.

22. In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail. [a]

Recovery of arrears of fees, duties, etc.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue,

may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land-revenue.

Farmer may apply to Deputy Commissioner or other officer to recover amount due to him by licensee.

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the [b] Deputy Commissioner or other officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and, on receiving such application, such [c] Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Provided that the execution of any process issued by such [d] officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court

[a] The last paragraph of Section 22 has been omitted as directed by Notification No. 93 I. R., dated the 21st November 1879.

[b] [c] [d] Certain words in Section 24 have been omitted as directed by Notification No. 93 I. R., dated the 21st November 1879.

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to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

Recovery of penalties due under bond.

25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74; and, upon breach of the condition of such bond by him, the whole sum named therein as amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

SCHEDULE.

[*Enactment repealed.*]

Omitted along with section 2.